

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**GROENEVELD TRANSPORT
EFFICIENCY, INC.**

Plaintiff,

v.

**LUBECORE INTERNATIONAL,
INC.**

Defendant.

-) CASE NO. 1:10-CV-00702
-)
-) JUDGE DONALD C. NUGENT
-)
-) MAGISTRATE JUDGE
-) WILLIAM H. BAUGHMAN, JR.
-)
-) **PLAINTIFF GROENEVELD TRANSPORT
EFFICIENCY, INC.'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION IN LIMINE TO EXCLUDE
REPORT AND TESTIMONY BY DR.
MAJID RASHIDI**

Defendant Lubecore International, Inc. ("Defendant") asserts in its Motion *in Limine* to Exclude the Report and Testimony by Dr. Majid Rashidi that Dr. Rashadi's testimony should be prohibited as it is offered to rebut the testimony of a fact witness. However, a great deal of Martin Vermeulen's testimony presents expert opinion, not fact testimony, and as such it is completely appropriate to rebut that testimony with an expert. "We are aware of no case that suggests a party is precluded from calling a rebuttal expert when the opposing party admits his "expert" testimony through a lay witness, and we decline to impose such a rule now." Konvitz v. Midland Walwyn Capital, Inc., 129 Fed. Appx. 344, 347 (9th Cir. 2005).

Mr. Vermeulen is an engineer who was engaged by Defendant to create Defendant's product at issue in this action. Defendant seeks to present Mr. Vermeulen's testimony at trial by video deposition, taken within the last weeks just before trial.

But, Defendant does not present Mr. Vermeulen to testify as a fact witness regarding his design of the Lubecore product. Rather, Defendant seeks to present through Mr. Vermeulen

expert assessments and opinions about the function and functionality of the Groeneveld EP0 product.

Mr. Vermeulen worked for Groeneveld over thirty years ago. He now testifies to some fact matters to which he has first-hand knowledge, but most of his testimony seeks to present expert testimony regarding the current Groeneveld product.

(page 10)

7 Q. Are you currently employed, Mr.
8 Vermeulen?

9 A. I am self-employed.

10 Q. And what do you do in your
11 self-employment?

12 A. I design products for the
13 automotive industry on a freelance basis, and I
14 have a partnership with a Korean company called
15 Taesung. And for them I develop automotive
16 products, and I am responsible for export
17 sales, and "export" means outside Korea.

18 Q. Is the business of Taesung totally
19 automotive parts?

20 A. Yes, they are. Automotive and
21 heavy machinery equipment. We are what is
22 called or known in the industry as an "OEM"
23 supplier. And "OEM" stands for "original
24 equipment manufacturer".

(pages 11-12)

16 Q. Do any of your responsibilities
17 today involve automated lubrication systems?

18 A. Yes, sir, it does.

19 Q. In what sense?

20 A. In Taesung, we are a producer of
21 automated lubricating system parts, and I am
22 designing and developing engineering systems
23 for various brands of automated lubricating
24 systems around the world.

25 Q. Can you give us an idea of what
1 brands you do that for?

2 A. Oh, there are quite a lot. Most
3 popular names is Ciaponi, Lincoln, EE,
4 Lubecore, BEKA-MAX. There are dozens and
5 dozens of companies in the automotive industry,
6 lubricating systems. ***

(page 21)

7 Q. Why does the base of the new pump
8 that your team engineered for Groeneveld have
9 the irregular shape it does?
10 A. The irregular shape is more or less
11 determined by the function of the parts that
12 are in it. When you make a product of
13 aluminium, the price of aluminium is in effect
14 the highest cost price of the pump, highest
15 part price of the pump. So you want to keep
16 every single gram of aluminium. You want to
17 take out that you don't need. What you see in
18 the picture is that the round shape is actually
19 following the round piston, and the four
20 straight columns are there to hold the bolts
21 that connect the bottom ceiling part to the
22 main body on the front, the valves that you
23 see. If you want to make it look nice, you
24 make it square or round, or you give it a nice
25 design. ***

(page 22)

5 Q. Why is the base the thickness it
6 is?
7 A. There's reasons, technical reasons
8 for that. If you make it thicker, that's
9 rather silly, because you're spending money on
10 something that's not supposed to be there.
11 When you make it thinner, you have a serious
12 risk that the pressure inside makes the body
13 burst. And that's definitely something you
14 don't want, for safety reasons.

15 Q. Would it have cost more to
16 manufacture this pump if it had had a rounded
17 aluminum alloy base to it?

18 MS. MICHELSON: Objection. Go
19 ahead.

20 A. Yes. I would say that anything --
21 if you take this particular body, if we --
22 anything was changed on this body, any gram of
23 material, wherever you would place it, that
24 would make it more expensive.

(pages 24-25)

19 Q. Could the team have designed this
20 pump with a square-shaped reservoir?

21 A. Yeah. Sure. We could have.

22 Q. Why didn't you?

23 A. Well, two reasons. First of all,

24 in nature things are usually round, not square.

25 Square things are extremely difficult to seal.

1 And as you can see, we are using seals inside
2 that pump and also a follower plate. Anything
3 that you make square on the four corners is
4 extremely difficult to close off, and it will
5 leak eventually. That is one reason.

6 And the second reason, of course,

7 is cost price. Square reservoirs, square
8 rings, square seals are more expensive than
9 round.

10 Q. Why is the reservoir on the top of
11 the pump housing?

12 A. Mostly because of gravity. Gravity
13 pulls things down. So if you put grease on the
14 bottom of something and it drops down, you have
15 to suck it up with a piston. That is
16 technically difficult. And especially in
17 wintertime, when grease is very stiff and cold,
18 pistons usually do not have enough vacuum to
19 suck up the grease. So it's only logic that
20 you place grease on top of the piston. Then
21 when the piston is sucking, gravity is helping
22 to put the grease into the grease chamber. ***

(pages 26-27)

12 Q. In engineering this pump, was one
13 of the team's goals to make a nice-looking
14 pump?

15 A. Well, if you look at the pump, that
16 answers for itself. The thing is ugly. It's
17 designed to do a function. If we were to make
18 it nice, I would have given it a nice plastic
19 cover, made some nice features on it. This
20 thing is purely functional.

21 Q. In engineering this pump, was one
22 of the team's goals to make it look distinctive
23 in any way?

24 MS. MICHELSON: I'm going to
25 object. Excuse me. Excuse me --

1 A. The only thing that we did was make
2 it work. And the way it looks now is simply a
3 result of engineering. And we never had any
4 idea to make it look in any particular way.

5 It's just engineered the way it is.

6 Q. Is there anything fanciful about
7 the configuration of the Groeneveld pump that
8 your team engineered?

9 A. No. Not really.

10 Q. Is there anything arbitrary about
11 the configuration of the pump that your team
12 engineered for Groeneveld?

13 A. No. I don't think so.

(pages 39-40)

22 A. Yes. I think it's fair to say that
23 it's a complete new generation.

24 Q. Why is that?

25 A. Well, there has been 30 years in
1 between, and a new generation, new materials,
2 new technical perspectives, a new fresh way at
3 looking things. That is, in my opinion, worth
4 calling it a "new generation".

As Mr. Vermeulen is being presented to offer expert and opinion testimony on functionality and distinctiveness of the Groeneveld product at issue in this case, it is fully appropriate that Groeneveld be permitted to present rebuttal including expert testimony. Otherwise, in the alternative, Mr. Vermeulen's testimony must be excluded.

Respectfully submitted,

/s/ Deborah J. Michelson

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2011, the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Deborah J. Michelson
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